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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 OLIVER BOLING,

12 Petitioner,

13 v.

14 STEVE LANGFORD,

15 Respondent.
16

Case No. CV 18-05677-ODW (AFM)

ORDER TO SHOW CAUSE

17
18 **BACKGROUND**

19 On June 22, 2018, petitioner, a federal inmate currently incarcerated in the
20 Federal Correctional Institution in Lompoc, California, filed this petition for a writ
21 of habeas corpus pursuant to 28 U.S.C. § 2241. The petition challenges the Bureau
22 of Prisons' computation of his sentence. For the following reasons, petitioner is
23 ordered to show cause why the petition should not be dismissed for lack of
24 jurisdiction.

25 **DISCUSSION**

26 Generally, a federal prisoner is required to exhaust his administrative remedies
27 prior to seeking a writ of habeas corpus under 28 U.S.C. § 2241. *See Singh v.*
28 *Napolitano*, 649 F.3d 899, 900 (9th Cir. 2011) (per curiam); *Martinez v. Roberts*, 804

1 F.2d 570, 571 (9th Cir. 1986); *see generally* *Ruviwat v. Smith*, 701 F.2d 844, 845 (9th
2 Cir. 1983) (per curiam) (exhaustion of administrative remedies aids “judicial review
3 by allowing the appropriate development of a factual record in an expert forum,”
4 conserves “the court’s time because of the possibility that the relief applied for may
5 be granted at the administrative level,” and allows “the administrative agency an
6 opportunity to correct errors occurring in the course of administrative proceedings”).

7 The BOP has established administrative procedures that may be used by a
8 federal prisoner to seek review of any aspect of his imprisonment. *Martinez*, 804 F.3d
9 at 571; 28 C.F.R. § 542.10 *et seq.* An inmate is first generally required to “present an
10 issue of concern informally to staff, and staff shall attempt to informally resolve the
11 issue....” 28 C.F.R. § 542.13. Next, the inmate must raise a complaint to the warden
12 of the institution where he is confined via a “Request for Administrative Remedy.”
13 The inmate may appeal an adverse decision by the warden to the Regional Director,
14 and an adverse decision by the Regional Director may be appealed to the General
15 Counsel. The appeal to the General Counsel is the final administrative appeal. 28
16 C.F.R. § 542.15; *see Nigro v. Sullivan*, 40 F.3d 990, 992 (9th Cir. 1994).

17 Because the exhaustion requirement is judicially created, however, a failure to
18 exhaust does not deprive a federal court of subject matter jurisdiction. *Ward v.*
19 *Chavez*, 678 F.3d 1042, 1045 (9th Cir. 2012). Furthermore, a failure to exhaust can
20 be excused. *See Camacho v. White*, 918 F.2d 74, 77 n.4 (9th Cir. 1990). “Typically,
21 exhaustion can be waived ‘if pursuing those administrative remedies would be
22 futile.’” *Brown v. Rison*, 895 F.2d 533, 535 (9th Cir. 1990) (quoting *Fraley v. U.S.*
23 *Bureau of Prisons*, 1 F.3d 924, 925 (9th Cir. 1993) (per curiam)). Other exceptions
24 to the general rule of exhaustion include when administrative remedies are
25 inadequate or ineffective, irreparable injury would result, or administrative
26 proceedings would be void. *See Laing v. Ashcroft*, 370 F.3d 994, 1000-1001 (9th Cir.
27 2004).

28 From the face of the petition, it does not appear that petitioner has exhausted

1 his administrative remedies. Further, nothing in the petition suggests that exhaustion
2 of administrative remedies would be futile or would result in irreparable injury, or
3 that petitioner's available administrative remedies are inadequate or ineffective.
4 Thus, it appears that the petition is subject to summary dismissal. *See Mangum v.*
5 *Ives*, 2013 WL 5755493, at *3-*4 (C.D. Cal. Oct. 23, 2013) (dismissing § 2241
6 petition which challenged BOP's denial of prior custody credits, due to petitioner's
7 failure to exhaust administrative remedies before seeking federal habeas relief);
8 *Singh v. Ives*, 2013 WL 1182959, at *2 (C.D. Cal. March 21, 2013) (summarily
9 dismissing § 2241 petition challenging sentence credit calculation based upon failure
10 to exhaust administrative remedies).

11 ORDER

12 Petitioner is ordered to show cause **on or before August 1, 2018** why this
13 action should not be dismissed without prejudice for failure to exhaust. Specifically,
14 petitioner must either indicate that he has exhausted his administrative remedies or
15 show that exhaustion should be excused for one of the reasons set forth above.

16 Finally, petitioner is cautioned that failure to timely file a response to this order
17 may result in dismissal of this action without prejudice for failure to exhaust, for
18 failure to comply with court orders, or for failure to prosecute. *See Fed. R. Civ. P.*
19 *41(b)*.

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21 DATED: 7/9/2018

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24 ALEXANDER F. MacKINNON
25 UNITED STATES MAGISTRATE JUDGE
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